1944. K

File No. S. Dwr. 1/44

Examined
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Legal DEPARTMENT
A.- BRANCH

Subject:—

Special Long Cause C.S. No. 92 of 1943.

The United Basel Mission Church in India
Trust Association Balmatha, Mangalore,
South Kanara, Madras Presidency (its
Chairman being Rev. A. Strekeisan) by
the attorney of the Trust - Robert Samuel
Bangera — — - Pltf.

V/s.

The Province of Bombay - Deft.
Claim — Rs. 10,500.

—x—

8 50 (E, K)

File No. S- Dwr 7/44

Std Sect. Slip 24-B

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Spl Suit 92-43

1 11 26/11/43

In the Court of the First Class Subordinate Judge,

At Dharwar.

Special Long Cause Civil Suit No. of 1943.

1. The United Basel Mission Church in India Trust Association, Balmatha, Mangalore, South Canara, Madras Presidency (its Chairman, being Rev. A. Strekeisen, age 50 occupation Missionary, residing at Calicut) by the Attorney of the Trust - Robert Samuel Bangera, age 38, Christian, occupation Head Master, Basel Mission High School, Dharwar. .....Plaintiff.

Against.

1. The Province of Bombay. ..... Defendant.

Claim Rs. 200/- for Court fees &

Rs.10,500/- for jurisdiction.

The Plaintiff states :-

(1) The Plaintiff is a body registered under the Indian Companies Act 1913 and consists mostly of Indians alone, having no affiliation or connection outside India.

(2) The Plaintiff has succeeded to and has taken over all properties formerly held by the Basel Mission. Among the said properties are :-

(a) S. No. 49 of Hosa-Yellapur in the city of Dharwar.

(b) S. No. 50 of Hosa-Yellapur in the city of Dharwar.

(c) S. No. 99 of Marian Timmasagar in the city of Hubli.

On portions of these lands are Churches, Schools and

Chandavarkar 26/11/43

other buildings erected by the Basel Mission which now belong to the Plaintiff. Parts of the said lands are now distinguished by city survey numbers.

(3) A portion of Survey No. 49 of Hosa-Yellapur.Dharwar. measuring about 2 acres was held by the Basel Mission under a --- lease for 99 years granted in 1839 by the Government. The remaining area of S. No. 49 and the whole of S. No. 50 of Dharwar have been in the possession of the Plaintiff's predecessor-in-title and the Plaintiff for more than 90 years in their right as occupants and the title to the said lands has been derived either by adverse possession or by reason of a lost grant. S.No. 99 of Hubli has also been held for a similarly long period on a perpetual rent-free tenure.

(4) The defendant appears to entertain the view that all the three survey numbers are held by the Basel Mission on a lease of 99 years. And on the assumption that the period of lease had expired, the defendant accepted on 26th July,1940 the -- recommendation of the Commissioner. S.D., to regrant a part of the lands in Dharwar to the Plaintiff revenue-free and to resume the rest of the area. On 18th April, 1941 however, the defendant charged its view and directed the Commissioner to grant City S.Nos. 44,46,47,67,39,66,49(part) 39/2(part) 40 and 41 and open spaces comprised in City Survey Numbers 39/2,94,13,49,51 and 62 on an annual lease until further orders and to resume the rest of the lands. The City Survey Numbers mentioned above form a portion of the original Survey Numbers 49 and 50 of Hos-Yellapur,Dharwar. On the same day, that is, on 18th April, 1941, the defendant decided that the Basel Mission Authorities should be deemed to have occupied S.No. 99 of Hubli as tenants for 99 years and -- directed the Commissioner to regrant portions of it on an annual lease and resume the rest.

(5) The Plaintiff obtained the opinion of eminent Counsel of Bombay and memoralised the defendant to change its view and recognise the Plaintiff and its predecessors as having

having held the Dharwar lands as occupants for more than 60 years - (except as to two acres in S.No. 49 of Hosa-Yellapur, Dharwar which was held on a lease for 99 years), and the land at Hubli on a rent-free permanent tenure.

(6) The defendant rejected the Plaintiff's --- memorial on 20th March. 1943 whereupon it became necessary for the Plaintiff to seek the aid of the Court in safe--guarding its rights of occupancy and permanent tenure.

(7) The Plaintiff is still in possession of the lands in question except 3 acres in S.No. 99 of Hubli - which the defendant has made over to the Forest Depart--ment for War purposes on or about the 23rd December, 1942 and the actual possession of which cannot be claimed by the Plaintiff during the period of the War.

(8) Notice of suit was given to the defendant through the Collector of Dharwar on 12-8-1943 as required by Section 80 of the Civil Procedure Code.

(9) The cause of action for a declaration arose on 18th April 1941, when the defendant denied the right of the Plaintiff as occupant or permanent tenure-holder of the suit lands.

(10) The claim in suit has been valued at Rs.200/ for purposes of Court fee in view of the fixed fee of -- Rs.15/- prescribed for a declaratory suit. The market value of the properties as to which the Plaintiff claims a declaration is about Rs. 10,500/-.

(11) This Court has jurisdiction to try the --- suit, as it is one against Government and also because - the subject-matter exceeds Rs.5,000/- in value.

(12) The Plaintiff prays that a declaration be granted :-

(a) that the Plaintiff is entitled to hold as --- permanent occupants, by right of adverse ----

possession or by virtue of a lost grant, the lands bearing S. No. 49 (except 2 acres therein) and S. No. 50 of Hosa-Yellapur, Dharwar.

(b) that the Plaintiff is the holder of a rent-free permanent tenure in respect of S.No.99 of Marian Timmasagar, Hubli.

(13) The Plaintiff claims the costs of this suit.

(14) The Plaintiff craves liberty to amend this plaint, and claim, when the occasion arises, possession of 3 acres in S. No. 99 of Hubli which is taken possession of for war purposes by the Forest Department in December, 1942.

R S Bangera

I, Robert Samuel Bangera, holder of Power of Attorney from the United Basel Mission Church in India Trust Association, do --- hereby solemnly affirm that what is stated above is true to the best of my belief and information.

Dharwar,
26th November 1943.

R S Bangera

'True Copy'

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This suit is filed by the United Basal Mission Church in India Trust Association by its Attorney Mr.R.S.Bagnera against Government for a declaration that the plaintiff is entitled to hold as a permanent occupant, by right of adverse possession or by reason of a lost grant R.S.Nos.49 and 50 of Hosa Yellapur (Dharwar) and that he is a holder of a rent-free permanent tenure in respect of R.S.No.99 of Marian Timmasagar (Hubli).

2. By Government memoranda, Revenue Department, Nos.399 B/39 and 3997-B/39-18705 dated 18th April 1941 the suit lands were directed to be resumed and portions of it were ordered to be regranted on an annual lease to the plaintiff and the present holders. The ground of this decision was that these lands had been granted on lease for 99 years to the Basal Mission (the plaintiff's predecessors in title) and that the period of lease had now expired. (Vide R.L.A's opinion No 8385 of 25-9-1940 at P.5-7 of File No.X (Hubli)

3. The plaintiff's contentions are that except 2 acres out of R.S.No.49 which was granted on lease for 99 years, the rest of the suit lands had been in possession of the plaintiff's predecessors in title for more than 90 years in their right as occupants and that their title has been ripened by adverse possession or by reason of lost grant. These contentions are not tenable. There is ample evidence on record to show that the lands had been held on lease by the Basel Mission. The suit moreover appears to be time barred under Article 120 of the Limitation Act.

4. Sanction may therefore be accorded to the defence of the suit on the lines of the accompanying brief. A draft written statement is also put up for approval.

23/6

R.L.A Pmm 23/6/41

Secy/RD. 30.6

Suits :

Dharwa..

For a declaration that the plaintiff is entitled to hold as a permanent occupant, by right of adverse possession or by reason of a lost grant. Revision Survey Nos. 49 and 50 of Hosa Yellapur and that he is a holder of a rent free permanent tenure in respect of Revision Survey No. 99 of Marian Timmasagar

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 4657.

Bombay Castle, 3rd July 1944.

Letter from the Collector of Dharwar, No. L.A.W. 438, dated the 17th February 1944—

IN THE COURT OF THE FIRST CLASS SUB-JUDGE, DHARWAR.

Special Long Cause Civil Suit No. 92 of 1943.

The United Basel Mission Church in India Trust Association Balmatha, Mangalore, South Kanara, Madras Presidency (its Chairman being Rev. A. Strekeisen) by the attorney of the Trust—Robert Samuel Bangera .. .. .. Plaintiff;

versus

The Province of Bombay .. .. .. Defendant.

Claim—Rs. 10,500.

Forwarding papers in the suit noted in the margin; and requesting sanction to its defence.

Endorsement by the Commissioner, Southern Division, No. L.A.W. 685, dated the 25th February 1944—Forwarding the above with his concurrence.

Memorandum to the District Government Pleader, Dharwar, No. 4656, dated the 3rd July 1944—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

Original. Moos

P. N. MOOS,
Secretary to Government

G. R., No. 4657, L. D., dated the 3rd July 1944.

To

Issued C&P 24/8

*The Revenue Department,
*The Commissioner, Southern Division.
*The Collector of Dharwar.
The District Government Pleader, Dharwar (with two copies of the brief).

*With a copy of the brief.

No. of 1944.

Copy forwarded for information and guidance to

Submitted after issue

2 These papers may be now filed in a new suit file

25/8

A.P.A 25/8

new file S. Dwr 26/8/44

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DHARWAR SPECIAL SUIT No. 92 OF 1943.

Chronological Statement of Facts.

1. This is a suit filed by the United Basel Mission Church in India Trust Association by its Attorney Mr. R. S. Bangera, against the Province of Bombay for a declaration (*a*) that the plaintiff is entitled to hold as permanent occupant, by right of adverse possession or by virtue of a lost grant, the lands within the city survey and municipal limits of Dharwar and bearing Survey No. 49 (except 2 acres therein) and Survey No. 50 of Hosa-Yellapur, taluka Dharwar; (*b*) that the plaintiff is the holder of a rent free permanent tenure in respect of Survey No. 99 of Marian Timmasagar, within the city survey and municipal limits of Hubli and (*c*) for costs. The plaintiff further prays for leave to amend the plaint and to claim, when the occasion arises possession of 3 acres in Survey No. 99 of Marian Timmasagar, Hubli, which has been taken possession of by the Forest Department since December 1942 for war purposes.

2. The plaintiff challenges the orders of resumption, and new grant of the suit lands on annual lease to the plaintiff and the present holders, passed by Government in Government Resolutions, Revenue Department, Nos. 3997-B/39 and 3997-B/39-18705, dated the 18th April 1941, on the ground that these lands had been leased out for 99 years to the German Basel Mission, the plaintiff's predecessor-in-title, and that the period of the said lease had expired.

3. It appears that Revision Survey No. 49 of Hosa-Yellapur (Dharwar) measuring 25 acres and 36 gunthas was granted on lease for a period of 99 years to the Basel Mission, Dharwar, for mission purposes and Revision Survey No. 50 of Hosa-Yellapur measuring 2 acres and 9 gunthas was granted on lease to the mission for the same purposes on condition of being kept open. Survey Nos. 49 and 50 of Hosa-Yellapur have been included within the C. T. S. limits of Dharwar and have been divided into various plots bearing different C. T. S. numbers as shown in the statements A, B and C at pages 15, 17 and 19 of File II (Collector's No. L.B.P. 467).

See Map (Dharwar) File II : p. 23.

History of the grant of Survey Nos 49 and 50 of Hosa-Yellapur :—

4. In the year 1837 certain German Missionaries at Dharwar, applied to Government for permission to erect a building for a mission school on a plot of land near the Court of Adalat (now the Subordinate Judge's Courts). As that site was too near the military Native Cantonment, the missionaries were permitted to select another spot not open to the above objection and were also granted as a present the materials collected for the erection of a travellers' bungalow. Accordingly the work of construction of the building was commenced on the strength of the Collector's letter dated 16th August 1837. As this new plot was also open to the same objection, the Missionaries were directed to suspend the work of building until it had received the sanction of Government. Subsequently on 19th December 1837, Government by their letter No. 3570 informed the Collector of Dharwar that sanction had been accorded to the Missionaries to proceed with their work of construction.

File No. VI (Dharwar) pp. 5-7.

Do. p. 19.

Do. p. 25.

5. On 9th March 1839 the Collector of Dharwar informed the Acting Chief Secretary to Government by his letter No. 29 of 1839 that the German Missionaries stationed at Dharwar solicited that the grant of the land allotted to them by Government for building mission premises at Dharwar, may be made secure by a lease of 99 years. The Collector also recommended in the same letter that the Honourable the Governor in Council may be pleased to sanction the grant.

Do. pp. 27–29.

6. On 27th March 1839 the Collector of Dharwar was informed that the Governor in Council had sanctioned the land allotted to the German Missionaries at Dharwar being granted to them on a lease of 99 years as recommended by, him. (*Vide* No. 786 G. D. dated 27th March 1839).

Do. p. 31

7. It will be seen from Government's letter No. 376 of 1841 (General Department), dated 16th November 1841 to the Collector of Dharwar and the latter's reply No. 117 of 1841 General Department dated 23rd November 1841 that area of the land granted to the German Missionaries at Dharwar for building purposes on 99 years' lease was 9 acres and 38 gunthas. File No. VI (Dharwar) pp. 33, 35 and 37.

8. In the year 1844 Government were pleased to assign a piece of waste land to the German Mission at Dharwar for the erection of a Protestant Chapel. This Chapel appears to have been errected on Survey No. 49 of Hosa-Yellapur. Do. pp. 49–51 and Map at p. 61.

9. On 18th December 1851 one Rev. F. H. Albrecht executed a registered deed of Razinama in favour of Government surrendering his rights as a lessee of Survey No. 107 (Revision Survey No. 49) and Survey No. 108 (Revision Survey No. 50) to Rev. J. Josenhanas of Basel Mission. Do. pp. 55–57, 58–59.

10. In 1917 an inquiry was started by the Collector of Dharwar in respect of landed properties held by the Mission at Dharwar with a view to assess building sites which had remained unassessed. (*Vide* Collector's letter to the Missionary in Charge, Basel Mission, Dharwar): In reply the Rev. J. J. Urner, the then Missionary in charge sent to the Collector the details of the landed property called for by the Collector in his letter referred to above. From that reply it appears that Revision Survey No. 49 measured 25 acres 36 gunthas and was granted to the Mission by Government under Government letter No. 786 of 1839 dated 27th March 1839 for the purpose of building Mission houses on lease of 99 years and that Revision Survey No. 50 measuring 2 acres and 9 gunthas was granted for a similar period on lease on condition that no house should be built upon it. File No. I (Dharwar) p. 1. Do. pp. 3-7.

11. From the office notes made during the course of the above inquiry it further appears that no assessment was levied on Revision Survey No. 49 and that at the time of the City Survey in 1883 no inquiry had been made in respect of this land under section 5 of Act IV of 1868. It was also found that a greater portion of Revision Survey No. 49 had been permanently alienated and passed into the hands of non-Christians and persons other than Missionaries. As the land has orginally been granted on lease for Missionary purposes and as certain portions of the land were not used for those purposes at all, the Collector asked Mr. Urner the Missionary whether the Mission was prepared to relinquish to Government the land not used for Missionary purposes and alienated to outsiders, so that the Collector might deal directly with the occupants in order to enforce Government's rights to levy non-agricultural assessment. Mr. Urner replied by his letter dated the 25th January 1918 that the Mission was willing to relinquish to Government the land not in its possession. It may be noted that a portion of the land Revision Survey No. 49 was in the occupation of Mr. Charles Deodhar and another portion in the occupation of Mr. Shivrao Arur who held it as a permanent lessee from Mr. A. A. Costa and who had in his turn given half of that portion on similar terms to Mr. D. N. Chandavarkar. On 22nd June 1918 the Collector wrote to Messrs. Arur, Chandavarkar and Deodhar whether they were prepared to purchase from Government in perpetuity the land comprised in their plots on payment of the usual occupancy price and assessment. (*Vide* Collector's No. N.A.S.R./D.M. 54 of 22nd June 1918.) A similar letter was addressed to Mr. A. A. Costa the lessor of Mr. Shivrao Arur on 7th November 1918. All these persons expressed willingness to comply with Government's suggestion. On 23rd July 1919 the Collector confirmed Mr. A. A. Costa as a perpetual direct occupant of Government in the occupancy of the plot of land on which the bungalows of Messrs. Arur and Chandavarkar stood, on payment of an occupancy price of Rs. 150 and an annual assessment at the rate of Rs. 12 per acre. (*Vide* N.A.S.R./D.M. 54, dated the 23rd July 1919). Accordingly an agreement was executed by Mr. Costa in favour of the Mamlatdar of Dharwar in the year 1919. With regard to the other plots on Survey No. 49 which were File No. I (Dharwar) pp. 9-29. Do. p. 29. Do. p. 31. Do. p. 33. Do. p. 54. Do. p. 65. Do. p. 73.

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occupied by Christians the Collector thought it desirable not to assess them till the expiry of the period of the 99 years' lease.

File No. I (Dharwar) p. 53.

12. In the year 1921 there was a City Survey inquiry at Dharwar when it was proved that besides the two plots mentioned above in paragraph 11, some more plots out of Survey No. 49 had been alienated to non-Christians. On 31st May 1921 the Collector issued a Memorandum (No. N.A. S.R./D.M. 54 of 1921) to four persons (Non-Christians) who were found in possession of part of Survey No. 49 of Hosa-Yellapur informing them that the plot on which their buildings stood in Survey No. 49 was a portion of the land leased by Government for 99 years to the Dharwar Basel Mission Society for Missionary purposes and that as the Society had not stuck to the conditions of the grant the lease had been cancelled in respect of such portions of the land as were in possession of Non-Christians. The Collector also inquired of those four persons whether they were prepared to purchase from Government the occupancy of the land comprised in their respective plots on payment of a nominal occupancy price of Rs. 250 per acre and non-agricultural assessment according to current standard rate. Those occupants expressed their willingness to purchase their respective plots on the terms proposed by the Collector. The City Survey Inquiry Officer also held that the land occupied by those persons vested in Government and that the alienations made in their favour were unauthorised. On 14th April 1922 the Collector by his No. N.A.S.R./D.M. 54 confirmed the five persons named therein as perpetual direct occupants of Government in the occupancy of the plots shown against each of them on payment of an occupancy price of Rs. 250 per acre and an annual non-agricultural assessment at Rs. 75 per acre. The Collector also ordered that agreements in form H appended to the Bombay Land Revenue Rules should be obtained from these persons.

File No. I p. 82.

File No. I (Dharwar) p. 91.

Do. pp. 93 to 99.

Do. pp. 141–148.

Do. p. 149.

13. It may be noted here that in the City Survey Inquiry of 1921 the Inquiry Officer decided that Chalta Nos. 32 to 45 and 48 to 68 forming parts of Revision Survey No. 49 of Hosa-Yellapur vested in Government and that the then holders thereof were duly lessees for 99 years from (1839-1938) some of them being in unauthorized occupation.

Do. p. 207.

14. It appears that in 1932 a part of the land granted to the Basel Mission at Dharwar-Hubli in 1838–39 was transferred under a registered sale-deed by the Basel Mission in favour of the United Basel Mission Church in India Trust Association. Up to 1932 the Basel Mission and the Church were one body. In 1932 the Church was made independent and part of the property held on lease by the Basel Mission was transferred to the Church under the management of the United Basel Mission Church in India Trust Association as stated above. On 24th August 1936 the secular Agent of the Basel Mission, Gadag-Betgiri, in his letter to the Collector referred to Government's letter No. 786 of 27th March 1839 sanctioning the lease of 99 years and requested the Collector to move the Government to renew the lease either for another 99 years or for a permanent grant. On 16th February 1937 a similar letter was addressed to the Collector by Mr. C. S. Kirby the Attorney of the United Basel Mission Church in India Trust Associations. The statements A, B and C in File No. II pages 15–19 show the properties held respectively by the Basel Mission, by the United Basel Mission Church in India Trust Association and by private individuals. All these properties form part of Revision Survey Nos. 49 and 50 of Hosa-Yellapur.

File No. II (Dharwar) p. 3.

Do. p. 13.

15. On 22nd February 1938 the Mamlatdar of Dharwar reported by his No. 39 of 1938 that out of Revision Survey No. 49 measuring 25 acres and 36 gunthas and Survey No. 50 measuring 2 acres and 9 gunthas an area of 1 acre 12 gunthas and 23 square yards as shown in statement C had been resumed by Government for breach of conditions of the lease and disposed of to Non-Christian occupants on a payment of occupancy price and ground rent and out of the remaining 26 acres 32 gunthas and 98 square yards in Revision

File No. II (Dharwar) p. 21.

Do. p. 19.

Survey Nos. 49 and 50, an area of 7 acres, 1 guntha and 110 square yards had been transferred to the United Basel Mission Church in India Trust Association (as shown in Statement B) so that the net area actually occupied by the Basel Mission was 19 acres 30 gunthas and 109 square yards as shown in Statement A. The Mamlatdar stated that the Pancha valuation of land in occupation of the Basel Mission came to Rs. 50 per guntha and the occupancy price of 19 acres and 30 gunthas and 109 square yards came to Rs. 39,545-1-0 and non-agricultural assessment to Rs. 1,977-4-0 at the rate of Rs. 2 which was the standard rate for Zone II. The Mamlatdar also stated that the occupancy price of 9 gunthas 110 square yards in the possession of the United Basel Mission Church in India, a Trust at Rs. 50 per guntha came to Rs. 14,095-7-0 and non-agricultural assessment to Rs. 704-12-0.

File No. II (Dharwar) pp. 17-18.

Do. pp. 15-16.

16. On 26th April 1938 the District Deputy Collector, I Division submitted a report to the Collector that such portion of Survey No. 49 as was then in possession of the Mission (24 acres 23 gunthas 98 sq. yards) may be leased to the Mission rent free for a further period of 99 years, and that Survey No. 50 might be resumed and sold as a building site as it was no longer necessary for Missionary purposes.

Do. pp. 29-30.

17. The matter was subsequently referred to the Commissioner, Southern Division, on 4th March 1940 the Commissioner wrote to the Collector a letter (No. WTN. 986, dated 4th March 1940), stating the recommendations which he proposed to be made to Government and directing the Collector to ask the Missionary bodies to state their views on those proposals. On receipts of the Collector's report the Commissioner, Southern Division, in his letter No. WTN. 986, dated the 20th May 1940, submitted certain proposals to the Government regarding the renewal of the lease of lands held by the United Basel Mission Church in India Trust Association. On 26th July 1940 Government were pleased to issue a Memorandum, Revenue Department, No. 3997-B/39, laying down certain principles to be followed in the disposal of the land at Hosa Yellapur held by the Basel Mission. They were as follows :—

File No. III (Dharwar) p 19.

Do. p. 79.

Do. p. 77.

(1) the lands not required for Mission purposes to be resumed ;

(2) the Commissioner's proposal for the resumption of C. T. S. Nos. 17 and 70 to be accepted ;

(3) the Commissioner's proposal for the grant of plots mentioned in paragraph 3 of the Government memorandum in perpetuity to their present holders either on alienable tenure at a fair market price or on unalienable tenure at a reduced occupancy price was approved subject to payment of non-agricultural assessment at the rate current in the locality. In cases where land had not already been assessed non-Assessment was to be levied with effect from 1st August 1938.

Agreement in Forms F or H should be executed by the holders with suitable modifications of the prescribed building conditions having regard to existing circumstances—

(4) as regards the other plots for which rent was charged by the Mission and plots Nos. 42 and 43 the Commissioner was requested to state if there was any objection to resume them and leasing them direct to the present holders ;

(5) as regards the plots mentioned in paragraph 5, the Commissioner's proposal to grant them revenue free to the Mission being free from objection was approved. The Commissioner was requested to state whether the open area round many of these plots which was not required for religious purposes could be resumed. He was also requested to state the area and revenue free value of the land to be given to the Mission.

18. On 16th August 1940 the Collector forwarded the Government Memorandum to the Prant Officer for taking action according to the directions given therein and to recover the occupancy price and non-agricultural assessment. On

File No. III (Dharwar) p. 77. (reverse). 19th August 1940 the Prant Officer forwarded the papers to the Mamlatdar for compliance and on 4th January 1941 the Mamlatdar submitted his report.

Do. pp. 81–83.

Do. pp. 97–125. 19. Meanwhile representations in writing were made by the Christian holders of the plots to the Secretary to Government (Revenue Department) contending that the area on which their plots and houses stood was not included in the grant of 99 years lease made by Government in their letter of 27th March 1839. They stated that the area occupied by their houses was the eastern part of the Revision Survey No. 49 (Old Survey No. 107) lying on a level lower than that granted to the German Missionaries in 1839. For this purpose they relied on an entry in the Survey Record of 1855) prepared at the original Survey Settlement) which showed that Survey No. 50 of Hosa-Yellapur was not then in the possession of the Missionaries but described as " Ulvi Basapa Mardi " while Revision Survey No. 49 was shown as Missionary bungalow and garden. They contended that this garden portion of the Mission in which their plots were situated was not included in the grant of 1839, given for building Mission bungalows. They also contended that it was in 1885 or 1886 that these plots came into their possesssion.

20. On 10th March 1941, the District Deputy Collector, I Division reported to the Collector that the occupancy price to be recovered should be only 1/5 of the full market value

File No. I (Dharwar) p. 127. i.e. Rs. 10 per guntha. On 15th March 1940 the Collector accepted these proposals and directed that they should be communicated to the holders and their views ascertained.

File No. III (Dharwar) p. 132. 21. On 17th April 1941 the Mamlatdar reported to the District Deputy Collector that the holders were unwilling to pay the occupancy price on the grounds stated in their detailed representation. On 26th May 1941 the Collector wrote to the Commissioner that the holders were not willing

Do. p. 183. to take plots on the new tenure and that inquiry would be made as to whether they would be willing to have the plots on old tenure on payment of occupancy price equal to $\frac{3}{4}$th of the value of the plots.

Do. p. 185. 22. On 18th April 1941, Government in their memorandum No. 3997-B/39, stated that Survey Nos. 49 and 50 of Hosa-Yellapur given to the Mission on 99 years lease had not been mentioned in the Collector's letter dated the 9th March 1839. In accordance with the orders issued in Government memorandum No. 3997-B/39-18705, dated the 18th April 1941, Government considered that no land at Hosa-Yellapur should be given to the Mission as a revenue free holding. Accordingly in modification of the orders issued in paragraph 4 of the Government Memorandum No. 3997-B/39, dated 26th July 1940, Government decided that C. T. S. Nos. 44, 45, 46, 47, 67, 39, 66, 49 (part), 39/2 (part), 40 and 41 occupied by the buildings for the purposes of the Church and Schools and residential quarters to the Mission authorities should be given on an annual lease from year to year pending further, orders. C. T. S. No. 39/2, 94, 13, 49, 51 and 62 were to be kept as open spaces or used as play grounds. Only those survey numbers which were required for play ground or were necessary to be kept as open spaces were ordered to be given to the Mission on an annual lease and the remaining open area which was not likely to be required for religious or charitable purposes was directed to be resumed.

File No. III (Dharwar) p. 181. 23. On 14th June 1941, the Commissioner requested the Collector to report the results of his offer of the plots on old tenure at 3/4th of the present value so that any disposals made as a result of it might be reported to Government for confirmation.

Do. p. 186. 24. The Government Memorandum referred to above in paragraph 22 was forwarded to the Collector on 8th May 1941 and he was requested to take action as per paragraph 2 of the Memorandum. On 27th May 1941, the Memorandum

Do. p. 187. with the papers was forwarded to the Prant Officer, I Division for action and report as to the amount of non-agricultural assessment in respect

of the plots occupied by the Church and the Mission and resume lands alienated by the Mission to certain plot holders who were to be asked to state whether they were willing to pay 3/4th of the occupancy price on old tenure or a nominal price on new tenure. On 28th June 1941, the Prant Officer submitted his report to the effect that Government Orders had been communicated to the Mission authorities and the plot holders. The Prant Officer stated that the total area of the Church and the compound shown as A, B, C, D in the sketch A with Collector's No. L. B. P. 467 (C. T. S. No. 39/1), was 2 acres 99 sq. yards and the area on which the Church building stood was 38 gunthas and that the maximum non-agricultural assessment of this area came to Rs. 49-14-0. The Prant Officer proposed that no assessment should be levied in respect of the area B. E. F. C., measuring 1 acre 3 gunthas and 99 sq. yards of C. T. S. No. 39/1, as it was an open land. He added that C. T. S. Nos. 13, 49, 51 and 62 should be kept as open spaces for being granted eventually so the occupants of the adjoining lands, that C. T. S. No. 94 which was a detached plot should be resumed and a portion marked N O P Q in C. T. S. No. 39/2 may be set apart as burial ground and that the remaining portion should be kept for play ground and the remaining area may be auctioned among the Christian population of Dharwar.

File III (Dharwar) p. 193.

25. On 16th June 1941, the Christian plot holders submitted another representation to the Mamlatdar contending that the site on which the plots stood, though it formed part of Revision Survey No. 49 was different from that originally granted to the German Missionaries, that it really formed part of Survey No. 50 which was described in the Revenue Records of 1885 as "Ulvi Basapa Mardi" and was originally a garden land. The plot holders contended that the land was not liable to be resumed or assessed and if at all, a nominal occupancy price of one rupee per plot should be levied. A copy of this representation was also forwarded to be Secretary to Government, Revenue Department.

File IV (Dharwar) pp. 3-4.

26. On 27th June 1941, the Collector requested the Prant Officer to state if there were any plot holders willing to take the built up plots for one rupee per plot on new tenure as suggested by the Commissioner.

Do. p. 43.

27. On 25th May 1942, the plot holders submitted a reply to the Collector that they were willing to pay three-fourth of the occupancy price i.e. Rs. 37-8-0 per guntha on old tenure in case Government turned down their representation that the land could not be resumed.

28. *History of the Grant of Survey No. 99 of Timmasagar, Taluka Hubli.*—In the year 1838, some German Missionaries at Hubli applied to the Collector of Dharwar for an allotment of Government land for erecting Mission premises in the town of Hubli. In that letter to the Collector, dated 16th November 1838 the Government asked the Collector whether the land required was to be given to the Missionaries on lease and on what conditions they were desirous of obtaining the grant. In reply the Collector recommended that the land might be granted to them for Missionary purposes on the same terms on which a grant was made to them at Dharwar (viz. as a free grant from Government). On 11th December 1838, Government informed the Collector by their letter No. 4452 of 1838 that the Governor in Council had sanctioned the grant, to the German Missionaries of Hubli, of the price of waste land, for the purpose mentioned for 99 years on payment of such trifling quit rent as may be deemed fair and equitable. An abstract of the statement of grant of land at Hubli to the Missionaries since 1830 shows that an area of 33 acres 16 gunthas and 12 square yards, and lying between Marian Timmasagar and Mudinaikan Artikatti was granted on 11th December 1838, under Government Orders to the German Missionaries for erecting Mission premises on a lease of 99 years. Subsequently on 12th July 1875 Government issued another Resolution No. 3910 (Revenue Department), approving of the recommendations of the Survey Commissioner, Southern Division (No. 946 of 1875). In

File VI (Dharwar) p. 39.

Do.

Do. p. 41.

Do.

Do. p. 47

File II (Dharwar) p. 5.

this Resolution a reference was made to the orders of Government No. 4452, dated the 11th December 1838, regarding the grant to the German Missionaries at Marian Timmasagar, Hubli measuring 18 acres and 19 gunthas assessed at Rs. 11 and it shows that the Survey Commissioner, Southern Division had recommended that the German Missionaries be allowed to hold the land on the same terms as those sanctioned by the Collector in 1847 (i.e. free assessment without any reference to the Government Order of 1838 fixing a term of 99 years and a trifling quit rent).

File No. I (Hubli) p. 21

29. On 10th November 1930 the Missionary in charge of the Basel Evangelical Mission applied to the Collector of Dharwar for grant of permission to build houses for dwelling purposes on part of Revision Survey No. 99 of Marian Timmasagar at Hubli. On 15th November 1930 the Collector warned the applicant not to start building operations pending further orders. On 15th July 1932 the Missionary in charge wrote to the Collector of Dharwar that that the idea of building had been dropped and he therefore withdrew his petition.

Do. p. 23

Do. p. 59

File No. II (Hubli) pp. 1 and 15.

30. In 1933 the Mission applied to the Collector for grant of permission to make non-agricultural use of 131 square yards of Revision Survey No. 99 for building shops. The Mission had already granted the site to one Mr. Ladhwa. On 8th October 1933 the Collector granted the necessary permission on payment of rent and non-agricultural assessment. The Collector also requested the Prant Officer to submit proposals for the levy of non-agricultural assessment on the area of existing buildings from which profit was derived by the Mission. On 11th May 1933 the Prant Officer forwarded the papers to the Mamlatdar for action. It was found that the Mission was deriving an income of Rs. 300 a year from the existing buildings.

Do. p. 25

File No. I (Hubli) p. 73.

31. On 6th October 1933 the Prant Officer submitted a report that in reply to a notice issued by the Mamlatdar of Hubli, the Missionary had replied that Survey No. 99 had been a permanent property to the Basel Mission since 1875 with no tax imposed thereon and that the original assessment of Rs. 11 had also been exempted as it was assigned for charitable purposes. The Prant Officer added that the annual income of the Mission from the buildings existing on the land was Rs. 300 which according to the Mission was not sufficient even for repairs and that the Mission requested that non-agricultural assessment should not be levied. The Prant Officer further stated that the area of Survey No. 99 in possession of the Mission was 18 acres and 119 square yards the non-agricultural assessment of which came to Rs. 28–8–0 as reported by the Mamlatdar of Hubli. The Prant Officer recommended the levy of non-agricultural assessment accordingly.

File No. I (Hubli) p. 74.

32. On 16th December 1933 the Collector ordered that since the whole land bearing Survey No. 99 of Marian Timmasagar of which the buildings in question formed part was granted unconditionally to the Mission for a nominal assessment under Government Resolution, Revenue Department, No. 3910 of 12th July 1875, altered assessment could not be levied in respect of the buildings. (*Vide* No. L. B. P. S. R. 65 of 16th December 1933.)

File No. III (Hubli) p. 1.

33. On 11th January 1935 the Missionary of Hubli applied to the Collector from exempting from assessment a portion of Revision Survey No. 99 (C. T. S. No. 179/A) on which Ladhwa had built a house.

34. Subsequently the Commissioner, Southern Division by his No. L.N.D.-799, dated 27th September 1935 held that the free grant of land was intended for religious and charitable purposes only and that letting out portions of the land to parishioners and deriving rent therefrom clearly constituted a breach of the conditions of the grant. He therefore set aside the Collector's Order No. L. B. P. S. R. 65 of 16th December 1933 and directed the Collector to levy agricultural and non-agricultural assessment, as the case may be on any land not strictly devoted to the religious or charitable purposes. The Mission authorities were informed of the Order on 29th October 1935.

35. Accordingly, non-agricultural assessment was ordered to be levied by the Collector in respect of 2,002 square yards (16 gunthas and 29 square yards out of Survey No. 99 as shown in the statement at p. 5 of file No. IV (Hubli). The non-agricultural assessment in respect of this area came to Rs. 24–14–0. On 20th August 1936 a Sanad under Rule 56-II of the Land Revenue Rules was issued to the District Chairman, Basel Mission. The altered assessment was made payable from the August 1935. File No. IV (Hubli) p. 13.

36. On 15th October 1936 the Chairman of the Mission applied to the Collector for grant of permission to the Young Men's Christian Association to erect a small building 22′×26′ on C. T. S. No. 209 for holding their meeting. On 17th January 1937 the Collector granted the permission by his No. L.N.A.-176. File No. V (Hubli) p. 25. Do. p. 27.

37. On 9th November 1936 the Agent of the Basel Mission at Gadag-Betgiri applied to the Collector referring to Government letter No. 4452 of 11th December 1838 and observing that the land was granted to the Mission as a permanent property and that in case the lease is not a permanent one the land may be granted to the Mission permanently. The application was eventually sent to the Mamlatdar for inquiry.

38. On 9th January 1937 the Mamlatdar reported that Survey No. 99 was granted to the German Mission at Hubli in 1838 and 1875 free of assessment and the free grant was entered in V. F. No. 1 of 1900–1901 and that in the circumstances the question of renewal of the lease did not arise. The Mamlatdar further reported that the Mission was in possession of 15 acres 8 gunthas and 94 square yards free of assessment, an area of 1 guntha and 10 square yards having been assessed in 1933 and an area of 16 gunthas 29 square yards assessed in 1935. File VI (Hubli) p. 17. Do. p. 19.

39. It may be noted here that in the City Survey Inquiry of 1884 at Hubli it was decided that the site of C. T. S. No. 7655 on which there was a bungalow of principal of the Basel Mission should be continued rent free. In a similar inquiry in 1921 at Hubli, the Inquiry Officer, decided that Chalata Nos. 80 to 100, 280 to 284 and 6 standing in Revision Survey No. 99 of Timmasagar were granted by Government for 99 years by G. R. No. 4452 of 11th December 1838, and by G. R. No. 3910 of 12th July 1875 the lease was made permanent. Do. p. 21. File No. VI (Hubli) p. 23.

40. On 16th February 1937 the Attorney of the United Basel Mission Church in India Trust Association sent a letter to the Collector in term similar to those contained in the application dated 9th November 1936 from the Agent at Gadag-Betigiri. (*Vide* paragraph 37 above). On 28th April 1937 the Assistant Collector reported that the question whether the Government Resolution No. 3910 of 12th July 1875 converted the 99 years' lease into a permanent one could not be clarified in the absence of the Collector's letter of 1847 referred to in the Government Resolution which was not available. In the absence of that letter the Assistant Collector interpreted the grant to be free of assessment only and not a permanent grant. On 4th October 1937 the Assistant Collector submitted a further report that the correct area of Revision Survey No. 99 in possession of the Mission was 16 acres, 32 gunthas and 66 square yards as reported by the Mamlatdar on 27th August 1937. The latter report of the Mamlatdar shows that the total area of Revision Survey No. 99 was 18 acres, 33 gunthas out of which 2 acres and 33 gunthas was transferred as gaothan and was in possession of the Mission and 1 acre, 26 gunthas and 55 square yards was included in the Police Lines. File No. VI (Hubli) p. 25. Do. p. 95.

41. On 28th October 1937 the Collector wrote to the Assistant Collector to ascertain the terms on which the land was acquired for Police Lines and the compensation if any paid to the Basel Mission. On 29th April 1938 the Assistant Collector replied that Survey No. 109 had been given in exchange for part of Revision Survey No. 99 and that the compensation agreed upon for the excess area taken by the Police was the construction of a good boundary wall between the Police Lines and the land held by the K. E. Mission. File No VII (Hubli) p. 1. Do. p. 37.

42. On 18th December 1939 Mr. R. S. Bangera the Attorney of the United Basel Mission Church in India Trust
File No VIII (Hubli) p. 1. Association applied to the Collector for permission to convert an area of 219,114 square feet on C. T. S. No. 209 out of Revision Survey No. 99 into non-agricultural land which was proposed to be divided into several plots for erecting buildings for Christians and stated that a reasonable increase in the assessment may be made having regard to the fact that the plot was to be used for charitable purposes. This application was sent to the Prant Officer and then to the Mamlatdar for inquiry and report with a direction, to record the applicant's statement as to whether he was willing to
File No VIII (Hubli) p. 9. pay non-agricultural assessment and abide by the building conditions.

Do p. 17. 43. On 20th February 1940 the Mamlatdar submitted his report to the effect that the application of Mr. Bangera should not be granted till the question of renewal of the lease of the Basel Mission properties at Hubli was decided by Government. On 21st February 1940 the District Deputy
Do p. 19. Collector submitted a similar report. On 8th March 1940
Do p. 21. Mr. Bangera was informed by the Collector that as the question of renewal of the lease of Basel Mission properties was not yet decided his request for non-agricultural permission could not be granted similar applications received by the Collector from Centanary Christians and others for permission to build on part of Revision Survey No. 99 were kept pending till the decision of the question of the renewal of the lease was disposed of by Government.

File No. X (Hubli) p. 1. 44. On 18th April 1941 Government issued a memorandum No. 3997-B/39-18705 (Revenue Department) in respect of the question of renewal of the lease of Survey No. 99 granted to the Basel Mission. The memorandum was to the following effect. The grant of the land to the Basel Mission was considered to have been for 99 years and it came to an end in 1937. Accordingly Government decided that the lease of the lands held by the Basel Mission at Marian Timmasagar should be terminated. Government further decided that the plots occupied by the Manager's bungalow, the Church and its compound and the Young Men's Christian Association building should be granted to the Mission on an annual lease from year to year pending further orders. Similarly the plot required for the play ground by the Mission Authorities should be given on an annual lease. Plots E, F, G and H were ordered to be resumed and disposed of in a suitable manner. The Commissioner's proposals for the resumption of plots alienated by the Mission and for the grant of these building plots to their present holders on old tenure on payment the occupancy price equal to three-fourth of their value, or on new tenure at a nominal price were approved and the Commissioner was directed to levy non-agricultural assessment on all plots from 1st August 1941.

45. It appears from the correspondence in File No. IX (Hubli) that further action as per Government Memorandum, Revenue Department of 18th April 1941 referred to above in paragraph 44 is being taken up.

46. In 1942 the plaintiff submitted a memorial to Government to change its view and recognize the plaintiff and his predecessors-in-title as having held the Dharwar Hosa-Yellapur lands as occupants for more than 60 years (except 2 acres in Revision Survey No. 49 to be on a lease of 99 years) and having held the land at Hubli on a rent free permanent tenure. On 20th March 1943 the Government rejected the plaintiff's memorial. The plaintiff states that the Missionaries at Hubli are still in possession of all lands in question except three acres of land at Hubli, which has been made over to the Forest Department on or about 23rd December 1942 for war purposes.

47. On 12th June 1943 the plaintiff gave notice of this suit under section 80 of the Civil Procedure Code.

48. On 26th November 1943 the plaintiff filed this suit in the Court of the First Class Subordinate Judge, Dharwar.

Grounds of Defence.

1. *Notice.*—The notice of the suit given by the plaintiff is defective in that it does not comply with the provisions of section 80 of the Civil Procedure Code. The notice states neither the cause of action nor the relief or reliefs which the plaintiff claims. The object of section 80 is to give Government an opportunity of settling the claim without litigation or to enable them to investigate the alleged cause of complaint and to make amends if they think fit before they are impleaded in the suit. This object is liable to frustration if the notice does not give all the particulars required by section 80. It is for this reason that the Courts have held that the provisions of this section are explicit and mandatory and admit of no exception and that the plaint deserves to be rejected under Order VII, Rule 11 of the Code for want of strict compliance with those provisions. (*See* Bhagchand *v.* Secretary of State, I. L. R. 51 Bom. 725 and Jagdish *v.* Debendra Prasad I.L.R.58 Cal. 850).

2. *Limitation.*—The plaintiff contends in paragraph 9 of the plaint that the cause of action arose on the 18th of April 1941 when the defendant denied the plaintiff's right as occupant or permanent tenure-holder of the suit lands. The plaintiff evidently refers to Government Memoranda (Revenue Department) Nos. 3997-B/39 and 3997-B/39-18705 both dated 18th April 1941 by which the grant of the suit lands to the Basel Mission was considered to have been for 99 years only ending in 1937. It should however be pointed out that the denial of the plaintiff's alleged rights occurred in the year 1921 when the City Survey Inquiry Officer held that the lands in Dharwar and Hubli vested in Government and that they had been granted to the holders thereof for 99 years only (*See* paragraphs 13 and 39 of the Chronological Statement of Facts). Declaratory suits of this nature are governed by Article 120 of the Limitation Act. Under that article the time begins to run when the right to sue accrues. It is generally agreed that the right to sue accrues when the right in respect of which the declaration is sought is denied or challenged (*See* Limitation Act by Chitaley and Anaji Rao 1938 edn. Vol. II, p. 1668). The decision of the City Survey Inquiry Officer in 1921 which amounted to a denial by Government of the plaintiff's rights furnished the cause of action for this suit. The suit is therefore barred as it is brought after the expiration of six years from the time when the cause of action arose.

3. *Estoppel.*—The plaintiff's predecessors-in-title i.e. the Basel Missionaries had admittedly held the land as lessees from Government under the grant of 1839. It should therefore be urged that the Plaintiff is estopped from contending that Government is not the owner of the suit lands.

4. *Merits.*—With regard to Revision Survey Nos. 49 and 50 of Hosa-Yellapur (Dharwar) the plaintiff contends that an area of about 2 acres only was held by the Basel Mission under a lease of 99 years granted by Government in 1839. It is alleged that the remaining area of Revision Survey No 49 and the whole of Survey No. 50 had been in possession of plaintiff and his predecessors-in-title for more than 90 years in their own right as occupants and therefore their title to those lands had been ripened by adverse possession or by reason of a lost grant. In support of this contention the plaintiff seems to rely on the following circumstances :—

(*a*) The original grant made by Government in 1839 does not mention the area of the land granted on lease. Besides, the only land granted by the lease was the land on which the Mission premises were built. — File No VI (Dharwar) p. 31.

(*b*) The area occuped by the Church (C. T. S. No. 39/1) with its compound was 2 acres, 1 guntha and 99 sq. yards. It is therefore contended that only this area was granted under the orders of Government dated 27th March 1839. — File No. III (Dharwar) pp. 93 and 193.

(*c*) The Survey Records of 1847 show that Revision Survey No. 50 was described as "Ulvi Basapa Mardi" and not as belonging to Government.

(*d*) It was in about 1886-87 that the remaining area came into the possession of the Christian plot holders.

The reply to these contentions should be as under:—

Before 1847 there was no revenue survey in Dharwar. The two lands viz. Revenue Survey No. 107 corresponding to Revision Survey No. 49 and Revenue Survey No. 108 corresponding to Revision Survey No. 50 were originally a single plot of land bearing old Pymashi No. 89. Revenue Survey was first made in Dharwar in the year 1847. Therefore the land granted to the German Missionaries in 1839 was the whole of old Pymashi No. 89. That the whole of Revenue Survey No. 107 (now Revision Survey No. 49) was given over to the German Missionaries is further supported by the fact that in the Survey Records of 1847 and 1877 in respect of Revenue Survey No. 107 the entry in the third column showing the holders name is "Meherban Padri Saheb". It is true that corresponding entry in respect of the Revenue Survey No. 108 (Revision Survey No. 50) in the Records of 1847 is "Ulvi Basapa Mardi" but it is important to note that in the Revision Survey of 1877 this description does not appear but the holders name is again stated as "Meherban Padri Saheb." Therefore the description of Revenue Survey No. 108 in the Survey Records of 1847 does not conclusively prove that it was of the ownership of "Ulvi Basappa Mardi." It might have been so described for a variety of reasons which it is not possible to explain at this distance of time. At any rate it is for the plaintiff to prove that Revision Survey No. 50 did not belong to Government. As a matter of fact, it appears from the letter of the Rev. J. J. Urner dated 14th June 1917 that Revision Survey No. 50 measuring 2 acres and 9 gunthas was granted by Government on 99 years lease on condition that it should be kept open. There is nothing in Government letter dated 27th March 1839 and the correspondence which preceded it to show that the grant to the German Missionaries was of a small portion only and not of the entire plot of land.

File No. VI (Dharwar) pp. 69-71.

Do. do.

File No. VI (Dharwar) pp. 71-73.

Do. pp. 75-77.

File No. I (Dharwar) p. 3.

File No. VII (Dharwar) pp. 1 to 31.

5 There is therefore ample evidence on record to show that Revision Survey Nos. 49 and 50 of Hosa-Yellapure Dharwar had been held on lease by the Mission from the Government and unless the plaintiff can show by positive evidence, how much of the land was leased, the presumption is that the entire land was leased.

6. As regards Survey No. 99 of Marian Timmasagar, Hubli, the plaintiff contends that it has been held for more than 90 years on a perpetual rent free tenure. The land measuring 33 acres, 16 gunthas and 12 square yards was granted to the Basel Mission by Government letter No. 4452 of 1838 dated 11th December 1838 for 99 years on payment of such trifling quit rent as may be deemed fair and equitable. (*See* C. S. F. paragraph 28). No ground rent or assessment was recovered after 1841. It appears that in 1845 during the Survey operations the land was divided into two survey Nos. 103 and 99. All the land included in the compounds of the Missionary buildings was formed into Survey No. 99 while the portion of the land outside the said compound was formed into Survey No. 103. In 1847 the Collector of Dharwar ordered that the land included within the compound of the Missionary buildings i.e., Survey No. 99 should not be charged any rent as lands similarly situated in Dharwar were free from any rent or assessment. (This letter of the Collector is not on record). In 1875 it was discovered that this order of the Collector was inconsistent with Government's order of 1838. The question was referred to Government. By Government Resolution No. 3910, dated 12th July 1875 Government approved of the recommendation of the Survey Commissioner, Southern Division that the Missionaries should be allowed to hold the land Survey No. 99 on the same terms as those sanctioned by the Collector in 1847. The passage occurring in that Resolution on which the plaintiff seems to rely is this: "The German Missionaries be allowed to hold the land on the same terms as those sanctioned by the Collector in 1847 (i.e., free of assessment without any reference to the Government Order of 1838 fixing a term of 99 years on a trifling quit rent)". There is no Sanad evidencing the grant of the land to the Mission authorities. The Government Resolution of 1875 which sanctions the recommendation of the Survey Commissioner relates only to the liability of the land for the payment or assessment. That recommendation is contained in the Commissioner's Memorandum

File No. II (Dharwar) p. 5.

No. 946 of 1875 dated the 17th June 1875. The passage quoted above on which the plaintiff seems to rely might suggest that the Survey Commissioner suggested that the period of the grant should not be restricted to 99 years. But if the whole correspondence is carefully persued, this wou'd not be a correct conclusion. Although the Collector's letter of 1847 is not forthcoming, his letter No. 1306, dated 28th April 1875 on which the Survey Commissioner's recommendation was made in 1875 clearly shows that the order of 1847 confirmed in 1875 had nothing to do with the period for which the land was granted but related only to the question of the remission of rent or assessment. On the other hand the Collectors' letter of 1875 suggested that the Government should allow the Missionaries to hold the land free of any rent for the period of 99 years as originally fixed to the close of 1937. If the Survey Commissioner had disagreed with this proposal he would have stated so expressly and would have added that the grant should be in perpetuity. The most important circumstance in this case is the application of the Mission authorities themselves dated 22nd November 1838 for grant of land on lease for 99 years, on which the Resolution of 1838 was based. It is therefore not at all likely that the grant would have been in perpetuity. The remark in the Survey Commissioner's Memorandum that the land should be continued without any reference to the Government order of 1838 cannot therefore be construed to mean that the grant was made in perpetuity. In this connection reference should be made to paragraph 9 of Government Resolution, Revenue Department, No. 889, dated 28th February 1872 which throws doubt on the authority of the Government of Bombay to make a grant of land in perpetuity. Moreover, according to the provisions of the Crown Grants Act 1895 which applies with retrospective effect a Crown grant has to be construed strictly.

File No. VI (Dharwar) p. 41.

7. For these reasons therefore it should be urged that the grant of land to the Mission at Hubli was on a lease for a period of 99 years only but free of payment of assessment and rent and not a rent free grant in perpetuity as claimed by the plaintiff. The defence of limitation and estoppel may also be raised in the case the lands at Hubli. As regards estoppel it should be pointed out that pursuant to the Commissioner, Southern Division order dated 27th September 1935 (C. S. F. paragraphs 34 and 35), non-agricultural assessment was levied on the buildings constructed on the Mission land and the said assessment was paid hereafter. As regards limitation, it should be urged that the cause of action arose on the same date, i.e., 27th September 1935 when the Commissioner, Southern Division held that letting out portions of the land to parishioners and deriving rent therefrom constituted a breach of the condition of the grant and directed the levy of non-agricultural assessment. With respect to the land at Hubli also therefore, the suit is time-barred under Article 120 of the Limitation Act.

File No. IV (Hubli) p. 1.

8. The plaintiff also claims to have acquired title to the suit land by adverse possession. This contention is not tenable and should be denied. It is a fundamental principle that where possession can be referred to a lawful title it will not be considered to be adverse. The reason is that a person whose possession can be referred to a lawful title cannot be permitted to show that his possession was hostile to another title. (*See* Chitaley and Annaji Rao on Limitation, No. III, pp. 2048, 2049, 1938 edn.). The plaintiff originally came into possession of the suit lands under a legal title, viz., as a lessee and therefore his possession cannot be held to be adverse. It has been held by the Privy Council in Muhammad Mumtaz Ali Khan *v.* Mohan Singh I.L.R. 45 All. 419 that a person who is in fact in possession of land under a tenancy or occupancy title, cannot, by mere assertion in a judicial proceedings and the lapse of six or twelve years obtain a title as an under proprietor to the land. The mere non-payment of rent or discontinuance in the payment of rent cannot by itself create adverse possession. (I.L.R. 2 Pat. 38). The principle of lost grant also cannot be applied to the facts of this case in view of the fact that the land was granted in 1839 to the Mission for building houses.

9. For all these reasons therefore it should be urged that the suit fails and must be dismissed with costs.

The District Government Pleader, Dharwar has requested the Collector of Dharwar for certified copies of certain documents for production in Court in connection with Dharwar Civil Suit No.92 of 1943. The R.D. has requested this office to state whether there is any legal objection to produce certified copies of the documents at serial Nos.12, 13, 14, 17, 18, 19, 20, 21, 23, 24 and 25 in the D.C.P's letter No.319 dated 17-8-1944.

S.R.C. A Vol. 55/415 1838

1. Serial No.12 is a letter No.88 of 22-10-1838 from the Collector of Dharwar to the Acting Chief Secretary to Government requesting that Government may be moved to grant a piece of unoccupied waste land to the German Missionaries. There is an implied reference to this letter in the chronological statement of facts para 28. There is no objection to produce a copy of this letter.

Do. S.C. B

2. Serial No.13 is a letter from Government dated 16th November 1838 in reply to Collector's letter above. In this letter Government asked the Collector to state whether the land was to be given on lease and on what condition the missionaries were desirous of obtaining the grant. This letter has been mentioned in C.S.F. para 28. There seems no objection for production of this letter.

Do. S.C. M.

3. Serial No.14 is Government letter No.4482 dated 11th December 1838 to the Collector of Dharwar informing him that Government had sanctioned the grant of land to the German Missionaries for 99 years on payment of trifling quit rent. This letter is also referred to in C.S.F. para 28. No objection.

Do. S.C. N

4. Serial No.17 is a letter from the Collector of Dharwar dated 22nd November 1838 in reply to Government's letter serial No.13 above. In this letter the Collector recommended that the land might be granted to the missionaries on the same terms on which the grant was made to them at Dharwar. (C.S.F. para 28). No objection.

S.R.C. D Vol 65 1875

5. Serial No.18 is Government Resolution, Revenue Department No.3910 dated 12th July 1875 approving the recommendation of the Survey Commissioner, S.D. that the Missionaries be allowed to hold S.No.99 of Hubli on the same

terms as those sanctioned by the Collector of Dharwar in 1847 (i.e. free of assessment without any reference to Government Order of 1838 fixing the term of 99 years and a trifling suit rent). The resolution is referred to in C.S.F. para 28 and grounds of Defence para 6. There is no objectonixx to its production.

6. Serial No.19 is the letter No.946 of 1875 dated 19th June 1875 from the Survey Commissioner referred to in serial No.18 above. (Vide Grounds of Defence para 6). No objection.

7. Serial No.20 is Dharwar Collector's letter No.1306 of 28th April 1875 referred to in serial Nos.18 and 19 above. This letter is referred to in para 6 of the Grounds of Defence and is important for the purpose of proving Government's contention in that paragraph. No objection.

8. Serial No.21 is a letter dated 22nd November 1838 from the Mission Authorities to the Collector. Dharwar for grant of land at Hubli. No objection.

9. Serial No.23 is G.R.R.D. No.889 dated 28th February 1872 under which the rules for alienation of different classes of Government land were modified. It is referred to in paragraph 6 of the Grounds of Defence. Production should be allowed.

10. Serial No.24 is G.M.R.D.No.3997-B/39-18705 of 18th April 1941. Referred to in C.S.F. para 44. No objection.

11. Serial No.25 G.M.R.D. No.3997-B/39 dated 26th July 1940 (Vide C.S.F. para 17). No objection.

Presumably these documents are required for proving certain contentions of Government raised in the Grounds of Defence. There seems no objection their production and the R.D. may therefore be informed that certified copies of these documents may be supplied to the D.C.P.

RLA 7/11/44

No. 7325

Office of the
Remembrancer of Legal Affairs,
Bombay Castle, 16th July 1947.

Subject:- Sp. Long Cause-Suit No. 92 of 1943.

MEMORANDUM:

With reference to the subject noted above, the District Government Pleader, Dharwar is informed that the plaintiff, Trust, had approached Government with a proposal to compromise the suit whereby the Trust agreed to concede the right of Government to resume the lands and requested grant of leases of 30 years, subject to certain conditions, of the land in question. Government have considered the proposal and are agreeable to compromise the suit on the following terms:-

1. Land to be granted rent-free for religious and educational purposes:

	A.	G.	Value.
Dharwar	6	16	82,000/-
Hubli	2	4	31,656/-
	8	20	113,656/-

2. Land to be given on lease to the Mission -

Dharwar 8.16 - annual lease non-agricultural assessment as the Mission is receiving rent at present pending the establishment of a Housing Society.

Hubli 1 - usual non-agricultural assessment rent to the Mission.

9.16

3. Land to be resumed by Government -

Dharwar 10 - General Development.

Dharwar 1.26- Given to the owners to whom the land has already been sold by the Mission.

Hubli 4.23- For Police Deptt. (The Mission has submitted that some land in exchange of this land should be given to it but it has been informed that the question will be separately considered).

Hubli 9 - To be resumed and reserved earmarked for Housing Society to be formed within 2 years. The land will be given to the Housing Society and not to the Mission whether it will have concession rate or not will be considered after the Society is formed.

25.8

Pleader.

The District Government/is requested to ascertain whether the plaintiff is agreeable to these terms, and if so, he is requested to take the necessary further steps to get a decree passed in terms of the compromise.

for Remembrancer of Legal Affairs.

To

The District Government Pleader,
Dharwar.

MGS/16-7
Ms.

Copy to -

The Revenue Department,

✓The Commissioner, S.D.,

The Collector of Dharwar.

Submitted after issue.

2. file in S. Dwr. 7/44.

2.9.
19/7

AS

Office of the
25 United Basel Mission Church in
India Trust Association,
Bombay Karnatak, Dharwar,
Dated: 28th July, 1947.

From

Dr. Rev. P.E.Burckhardt, Ph.D.,
Chairman, United Basel Mission Church
In India Trust Association, Balmatha, Mangalore.

To

The SECRETARY,
Revenue Department, BOMBAY.

Subject:- Special Long Cause Suit No.92/1943.

Sir,

With reference to the Memorandum No. 7325 of the Remembrance of Legal Affairs, dated 16th July,1947, I have the honour to state that we agree to all the terms except the term pertaining 10 Acres of land in Dharwar to be resumed by Government.

We, therefore, beg to approach you with a request that you may kindly change your decision of resumption regarding the 10 Acres of open site in Dharwar for the following reasons:-

1. If the site is resumed and used for general development the existing Christian Girls' Hostel will not be able to maintain privacy and safety needed. It was with a view to keep the Girls' Hostel at a safe distance from any populated area the old Girls' Hostel was shifted in 1935 from Dr Khot's Compound to the present site.

2. It appears that the 10 Acres of land to be resumed include even the open site just infront of the Girls' Hostel and as such the Girls' Hostel will be deprived of the frontage and will be covered by other buildings. The area to be resumed also includes the well of the Hostel and one small outhouse, which are absolutely necessary for the maintenance of the Hostel.

3. While demanding the open site mentioned above for a Cosmopolitan Girls' Hostel, Teachers' Quarters and other buildings necessary for the carrying on the educational work efficiently, we had in view the future necessary development of our educational activities in Dharwar which is expected to be the centre of Karnatak Province and the seat of the Karnatak University. As a matter of fact, the educational activities of the Mission have been considerably extended during the last ten years. Although in 1937, our educational activities were confined to only one Boys' High School with a strength of about 300 pupils and two Primary Schools with a total strength of about 225 pupils, we have at present one Boys' High School with a strength of nearly 1000 pupils, a full fledged Girls' High School started in 1945 with a strength of 240 pupils, a Primary Training College started in 1947 with 40 pupil-teachers and four Primary Schools with nearly 700 pupils. The number of teachers serving in all these Institutions comes to about 63. All the above mentioned institutions are yet to be developed. A Hostel

27. 12.25

for the Primary Training College and the Boys' High School is an urgent need. At present a Hostel is housed in a rented building on a monthly rent of Rs 120/-. The open site of 3 acres available at present for organised games and Physical education of the pupil of the Boys' High School and two Primary Schools with a total strength of 1350 pupils is felt to be quite inadequate at the rate of 1 Acre per 250 pupils. It is, therefore, needless for me to state that in due consideration of the future developments of our educational activities the Mission is in real need of the open site of 10 Acres in Dharwar, proposed to be resumed by Government for general development. It must be mentioned here that the future development of the educational activities mentioned above will have to be undertaken in the nearest future, i.e., within next five or six years in consideration of the fact that as shown above within a period of the last ten years a considerable extension of our educational activities has been done by us. It is thus clear that the future developments for which we have demanded the open site of 10 Acres in Dharwar will not take place a Century hence as perhaps thought by the Government.

I, therefore, beg to request you to kindly consider the above mentioned facts sympathetically and give the site in question to the Mission for the educational purpose.

Even if the Government thinks that the above mentioned 10 Acres of land cannot be given to the Mission for Cosmopolitan Girls' Hostel and Teachers' Quarters and other educational and social activities we have to request the Government to grant atleast the site just in front of the Girls' Hostel and sufficient space of land round about the Girls' Hostel to the Mission and the remaining portion to the Housing Colony in view of the following reasons:

(1) As shown in para 2 of the letter, 8 acres 16 guntas are to be leased on annual lease N.A. pending the establishment of a Housing Society. But it must be noted that out of this area at least 2 acres have already been occupied by Trust houses and out of the remaining portion, a greater part is quite unsuitable for building sites, it being uneven and behind the existing Trust houses. The open space along the Dharwar-Hubli Provincial Road may also be unsuitable as building sites because of the requirements of a Provincial Road. Thus considerably very small suitable open space of land will be left for the use of the members of the Housing Society. Unless we get sufficient number of members, the Society will find it difficult to organise itself efficiently.

I hope confidently that a due consideration will be given to this and a favourable answer will be given to us.

I beg to remain,

Sir,

Your obedient servant,

J. Bruce Heard

Chairman

R. S. Bangera,
B. A., B. T.
ATTORNEY

1447 29

UNITED BASEL MISSION CHURCH
IN INDIA TRUST ASSOCIATION
BOMBAY KARNATAK

NO. ....

DHARWAR 31st July, 1947

From

Mr R.S.Bangera, B.A.,B.T.,
Attorney, U.B.M.Church in India Trust
Association, Dharwar.

To

The Secretary,
Legal Department,
Government of Bombay, Bombay.

Sir;

With reference to the memorandum No.7325 of the Remembrancer of Legal Affairs, dated 16th July,1947, regar-ding special Long Suit No.92/1943, I beg to inform you that we have made a representation to the Secretary to the Revenue Department regarding only one point, namely the ten acres of land in Dharwar to be resumed, for general development. A copy of our application is enclosed herewith for information. I shall be very thankful if you kindly issue instructions to the Government Pleader at Dharwar to apply for adjournment until we get a reply from the Revenue Department for our representation and not to object to adjournments if we apply for it.

I beg to remain,
Sir,
Your obedient servant,

R S Bangera
Attorney.

10715
A 11/9/47

10715
11-9-47

Submitted with ppts. (S. Dwr. 7/44)

2. Please see letter from Mr. R.S. Bangara overleaf. He request Govt. to instruct Govt. Pleader Dharwar to apply for adjournment until he gets a reply from R.D. for his representation.

3. We have already instructed the D.G.P. Dharwar under this office No. 8226 dt. 11-8-47). Therefor no action appears necessary on this. x slip A below

4 Papers may be filed with ppts

15/1

A.S. A/c the DGP to speak to the Revenue Department

15/5

12

Had we recommended the compromise?

R

16/10

Resubmitted.

21/10

A.S. The papers may be sent. U.O. to R.D. with a request to state how the matter stands with them as regards compromise

21/10/43

REVENUE DEPARTMENT
File No. (5) (of) to
Date 22/10/43
Serial No. 48

R.D. No 10143 dated the 21/10/43

3 H882 30-9-47 2/AG 150

Submitted with hps (S Ewz 7/44)

2 Please see letter from the A.-G.P. Dharwar at page 9 ante. The suit is fixed for hearing on 31-10-47. He requests to expeditiate the compromise matter if possible.

13/10

AS. The A.G.P may be informed that it is for the plaintiff to expedite the compromise and that if he wishes for an adjournment he must apply. If need arises it may be considered.

17/10/47

A.C.R I agree R.K. 15/10.

R.L.A Please make inquiries from R.D how the matter stands with them.

33

R.D.
(B.Branch).

The terms of compromise for the suit were as communicated by the R.L.A. in his memo. No. 7325, dt. 16/7/47, to the Distt Govt. Pleader, Dharwar. In this connection, the Chairman, United Basel Mission Church in India Trust Association, Dharwar, addressed his letter, dt.28/7/47, to Govt in the R.D. stating that the area of 10 acres at Dharwar refd. to in para. 3 of the R.L.A.'s memo., refd to above, may not be resumed for general development, but shd. be made available to the Trust Association for educational purposes and housing colony. The Collr. and the Commr. who were consulted in the matter have since submitted their report. These officers have stated that in view of the laudable objects of the Trust Assocn, there is no objection to the land in question being granted to the Trust Association. The case is submitted for the orders of Govt for accepting the recommendations of the Collr. and the Commr., and for requesting the R.L.A. to issue fresh instructions to the D.G.P., Dharwar, about the revised terms of compromise.

2. These papers may be retd. u.o. to the R.L.A. with the above information.

13615
10-11-47

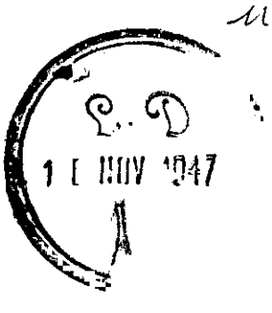
U.S.

5/11

Secy. 9.11.47

DD/-5/11.

mov. to R.L.A. dt. 10.11.47



35 13615 153
10-11-47 154

Submitted with [illegible] S.P. 11/47

To.

The R.L.A. may please see the R. S. note at P. 13 ante which has reference to his query of 16-10-47 at P. 11-12 The R.L.A's memo No. 7325 of 16-7-47 to which the R. S. refers is at Slip C. The reference at 'A' in the R. S note does not appear to have been received in this office as yet. The reply to the S.P. may be given on receipt of those papers.

ALR 14/11

RLA 14/11

RW 14/11/47

51

Special Suit No.92 of 1943.

162

Spl. Suit No. 92-47

Presented on 20th December 1947

Sd/- H.S.Hunshikatti,
Clerk of the Court.

In the Court of the Civil Judge, Senior Division, Dharwar.

PLAINTIFF:- R.S.Bengera holder of power of attorney of the United Church of Indda Trust Ltd., Dharwar

versus

DEFENDANT:- The Province of Bombay.

In this the plaintiff begs toapply as under:-

The above suit was fixed for hearing on 29/11/1947. On that day the plaintiff was not fit and in condition to attend the court, and give evidence. An application to grant an adjournment was presented but the same was rejected and the suit was dismissed as the pleader for the plaintiff could not under these circumstances conduct the case.

It is therefore, prayed that under the circumstances mentioned above, the order of dismissal be set aside and the suit restored to file.

Dharwar
20th Dec '47. Sd/- R.S.Bangera

In this, I, R.S.Bangera, the above named plaintiff do hereby on solemn affirmation state that what is stated in the above paras is true to the best of my knowledge abd belief and I believe the same to be true.

Dharwar.
20th Dec '47. Sd/- R.S.Bangera.

Solemly affirmed before me
by Mr.R.S.Bangera who is
identified by Mr.Chandawarkar
whom I personally know.

Sd/- H.S.Hunshikatti
Clerk of the Court.

I know the deponent

Sd/- D.N.Chandawarkar.

"Retain the papers

Notice to issue to show cause"

Sd/- B.A.Chaugule
C.J., S.D., DWR
22/1/1948.

Spl Mis 28 of 1948 35 163 164

In the Court of the Civil Judge, Senior Division Dharwar at Dharwar.

~~Applicant~~
PLAINTIFF:- R.S.Bengera holder of power of attorney of the United Church of India Trust Ltd., Dharwar.

versus

DEFENDANT:- The Province of Bombay.

The following objections are submitted to the plaintiff's application, on behalf of the defendant.

(1). The contents of the application are not admitted.

(2). Allegation regarding the unfitness of plaintiff applicant to attend the court is not true and not admitted.

(3). The application for adjournment was not made on the ground of plaintiff's unfitness to attend the Court nor was any Medical Certificate produced.

(4). The application is not maintainable at law and there are no sufficient grounds for the restoration of the suit.

(5). The suit was on the board of hearing for nearly two years and plaintiff was never ready for hearing on any of the several adjourned dates.

His ulterior object was and is to have a compromise of the suit effected; but never to get the suit tried.

Under these circumstances it is prayed that the plaintiff's application should be dismissed with costs.

District Govt Pleader.

Copy was applied for in person on the 15th Dec '47.

Sd/- x x x
Clerk of the Court.

It was ready for delivery on the 5th Jan '48.

Sd/- x x x
Clerk of the Court.

K-150X2-70.+ E-1280

It was delivered on the 6th Jan '48.

From 24-12-47 to 2-1-48 Xmas holidays.

Sd/- H.S.Hunshikatti.
Clerk of the Court.

K -/11/-
E 3/ 1/- Cop.& S.C.
Copy 3/12/-
-/14/-
-/ 1/-
4/11/-

On India Court fee stamp of 15 rupees.

Received on
26/11/43.

Sd/- N.S.Koneri.
Clerk of the Court.

In the Court of the First Class Subordinate Judge at Dharwar. Ex. 1

Special Long Cause Civil Suit No. 92 of 1943.

1. The United Basel Mission Church in India Trust Association, Balmatha, Mangalore, South Canara, Madras Presidency, (Its Chairman, being Rev.A Strekeisen, age 50, occupation Missionery residing at Calicut) by the Attorney of the Trust - Robert Samuel Bengera, age 38, Christain, Occupation Head Master, Basel Mission High School, Dharwar. Plaintiff

Against.

1. The Province of Bombay..... Defendant

Claim Rs.200/- for Court fees and
Rs.10,500/- for jursidiction.

The plaintiff states :-

(1) The plaintiff is a body registered under the Indian Companies Act 1913 and consists mostly of Indians alone, having no affiliation or connection out side India.

(2) The plaintiff has succeeded to and has taken over all properties formerly held by the Basel Mission. Among the said properties are:-

(a) S.No.49 of Hosa-Yellapur in the city of Dharwar
(b) S.No.50 of Hosa-Yellapur in the city of Dharwar
(c) S.No.99 of Marian Timasagar in the city of Hubli

On portions of these lands are churches, Schools and other buildings erected by the Basel Mission which

which now belong to the plaintiff. Parts of the said lands are now distinguished by city survey numbers.

(3). A portion of survey numbers 49 of Hosa-Yellapur, Dharwar, measuring about 2 acres was held by the Basel Mission under a lease for 99 years granted in 1839 by the Government. The remaining area of S.No.49 and the whole of S.No.50 of Dharwar have been in the possession of the plaintiff's predecessor-in-title and the plaintiff for more than 90 years in their right as occupants and the title tothe said lands has been derived either by adverse possession or by reason of lost grant. S.No.99 of Hubli has also been held for a similar long period on a perpet ual rent free tenure.

(4). The defendant appears to entertain the view that all the three survey numbers are held by the Basel Mission on a lease of 99 years. And on assumtion that the period of lease had expired, the defendant accepted on 26th July, 1940 the recommendation of the Commissioner, S.D., to regrant a part of the lands in Dharwar to the plaintiff revenue-free and to resume the rest of the area. On 18th April, 1941 however, the defendant changed its view and directed the Commissioner to grant city S.Nos,44,46,47,67, 39,66,49 (part) 39/2 part, 40 and 41 and open spaces comprised in City Survey Numbers 39/2, 94,13,49,51 and 62 on an annual lease until further orders and to resume the rest of the lands. The City Survey numbers mentioned above form a portion of the original Survey Numbers 49 and 50 of Hosa-Yellapur, Dharwar. On the same day, that is, on 18th April 1941, the defendant decided that the Basel Mission Authorities should be deemed to have occupied S.No.99 of Hubli as tenants for 99 years and directed the Commissioner to regrant portions of it on an annual lease and resume the rest.

(5). The plaintiff obtained the opinion of eminent Counsel of Bombay and memoralised the defendant to change its view and recognise the plaintiff and its predecessors as having held the Dharwar lands as occupants for more than 60 years -(except as to two acres in S.No.49 of

of Hosa-Yellapur, Dharwar, which was held on lease for 99 years), and the land at Hubli on a rent free permanent tenure.

(6). The defendant rejected the plaintiff's memorial on 20th March, 1943 whereupon it became necessary for the plaintiff to seek the aid of the court in safe-guarding its rights of occupancy and permanent tenure.

(7). The plaintiff is still in possession of the lands in question except 3 acres in S.No.99 of Hubli. which the defendant has made over to the Forest Department for War purposes on or about the 28rd December, 1942 and the actual possession of which cannot be claimed by the plaintiff during the period of the war.

(8). Notice of suit was given to the defendant through the Collector, Dharwar on 12-8-1942 as required by section 80 of the Civil Proceedure Code.

(9). The cause of action for a declaration rose on 13th April 1941, when the defendant denied the right of the plaintiff as occupant or permanenttenure holder of the suit lands.

(10). The claim in suit has been valued at Rs. 200/- for purposes of Court fee in view of the fixed fee of Rs.15/- prescribed for declaratory suit. The market value of the properties as to which the plaintiff claims a declaration is about Rs.10,500/-

(11). This Court has jurisdiction to try the suit as it is one against Government and also because the subject matter exceeds Rs.5000/- in value.

(12). The plaintiff prays that a declaration be granted:-

(a) that plaintiff is entitled to hold as permanent ~~occupation~~ occupants, by right of adverse possession or by virtue of a lost grant, the lands bearing S.No.49 (except 2 acres therein) and S.No. 50 of Hosa-Yellapur Dharwar

(b) that plaintiff is the holder os a rent free permanent tenure in respect S.No.99 of Marian Timmanagar, Hubli

(13) The plaintiff claims the costs of the suit.

(14) The plaintiff craves liberty to amend this plaint, and claim, when the occasion arises, possession of 5 acres in S.No.99 of Hubli which is taken possession for war purposes by the Forest Department in December, 1942.

Sd/- R.S.Bangera

I, Robert Samuel Bangera, holder of power of Attorney from the United Basel Mission Church in India Trust Association, do hereby solemly affirm that what is stated above is true to the best of my belief and information.

Dharwar, 26th Nov '43. } Sd/- R.S.Bangera.

Drafted and presented on 26/11/43 by
Sd/- D.N.Chandavarkar.

Examined and particulars ordered to be entered in the Register of suits.

26/11/43. Sd/- N.S.Koneri.
Clerk of the Court.

Order.

Issue summons to deft for S.I. returnable on 4/1/44.

30/11/43. Sd/- A.C.S.
Jt.F.C.S.J.

The application (Ex.172) for plff for adjournment is rejected. His pleader says at Ex.173 that he has no instructions.

Order.

Suit is dismissed for default. The plffs shall pay the legal costs of deft and shall bear his own.

Sd/- B.A.Chaugule.

29/11/47. C.J.S.D

ಪಾರ್ಟಿಗೆ ಅಥವಾ ವಿರುದ್ಧವಾಗಿ ಸಾಕ್ಷಿ ಹೇಳಿದವರು			ಪಾರ್ಟಿಗೆ ಅಥವಾ ವಿರುದ್ಧವಾಗಿ ಸಾಕ್ಷಿ ಹೇಳಿದವರು		
(1) ಅಲಿಗಾಸಿಗೆ ಸಾಕ್ಷಿಯು ವಿ.ಗ...	ನಿಲ್ಲ	- -	(1) ಮಹಾಬಾಯಿಯು ಅಥವಾ ಮಹಾಬಾಯಿಯಾಗಿ ಕರೆಯಲ್ಪಡುವ ಬಸ್ಸಿ ಮಾಳಪ್ಪ	-	- -
(2) ಮುಂಜಾಗ್ರತೆ ನಿಷೇಧಾಜ್ಞೆಗಳನ್ನು ಕೊಡಲು	-	ನಂ -	(2) ಮಂಜುಳಾಬಾಯಿ ಕೋಂ ಮಲ್ಲಿಕಾರ್ಜುನ ಸಿಂಧೂರ	-	- -
(3) ಪಾಪಾಬಾಯಿ ಕೋಂ ಗಣಪತಿ (ಪಿರ್ಯಾದಿ) ಸ್ವತಃ ಸಿಂಧೂರ ಗಣಪತಿ ಸಿಂಧೂರ ಮತ್ತು ಇತರರ ವಿರುದ್ಧ ಮಂಜೂರು ಮಾಡಿಸಿಕೊಳ್ಳುವುದು	-	- -	(3) ಪಾಪಾಬಾಯಿ ಕೋಂ ಗಣಪತಿ (ಪಿರ್ಯಾದಿ) ಸ್ವತಃ ಸಿಂಧೂರ ಗಣಪತಿ ಸಿಂಧೂರ, ಗಣಪತಿ ಸಿಂಧೂರ, ಗಣಪತಿ ಸಿಂಧೂರ, ಇತರರು ಗಣಪತಿ ಸಿಂಧೂರ, ಗಣಪತಿ ಸಿಂಧೂರ, ಗಣಪತಿ ಸಿಂಧೂರ	೬	ನಂ -
(4) ಸಾಕ್ಷಿದಾರರ ಸಹಿಯ ಬಗ್ಗೆ	-	- -	(4) ಸಾಕ್ಷಿದಾರರ ಹೆಸರಿನ ಬಗ್ಗೆ	-	- -
(5) ದಾಖಲಾದ ಕೇಸಿನ ಮೊತ್ತ ರೂ 10,000/-	ನಿಲ್ಲ	- -	(5) ಸಿಲ್ಕ್ ಅಂಡ್ ಕಾಟನ್ ಮಿಲ್ಸ್ ರೂ 10,000	ನಿಲ್ಲ	- -
ಮೊತ್ತದ ಬಗ್ಗೆ ಸಾಕ್ಷಿಯು ಮೊದಲು ಹೇಳಿದ್ದಕ್ಕೂ ಈಗ ಹೇಳಿದ್ದಕ್ಕೂ ವ್ಯತ್ಯಾಸ ಇದ್ದಲ್ಲಿ			(6) ಸಾಕ್ಷಿದಾರರ ಹೆಸರಿನ ಬಗ್ಗೆ		
(6) ಸಾಕ್ಷಿಯು ಮಾಡಿದ ಸಹಿಯ ಬಗ್ಗೆ	ನಿ	- -	(7) ಒಕ್ಕಲುತನದ ಬಗ್ಗೆ	-	- -
(7) ಕುಮಂಗಾವಣ ಬಗ್ಗೆ	-	- -	(8) ಜಾಫ್ತಾಂಗಾರದ ಬಗ್ಗೆ	-	- -
(8) ಜಾಫ್ತಾಂಗಾರದ ಬಗ್ಗೆ	-	- -	(9) ನಕಲು ಮಹಾಜರು ಬಗ್ಗೆ ಫಿರ್ಯಾದಿ ಸಾಕ್ಷಿಯು ಸಿಂಗ ಲಕ್ಷ್ಮಣ ಸಿಂಗ ಠಾಕೂರ, ಸಿಂಗ ಲಕ್ಷ್ಮಣ ಸಿಂಗ ಠಾಕೂರ		ನಂ ನಿ
(9) ನಕಲು ಮಹಾಜರು ಬಗ್ಗೆ ಸಾಕ್ಷಿಯು ಏನೂ ಹೇಳಿದ್ದಿಲ್ಲ	ನಿ	ನಂ -	(10) ಅಡಮಾನಿತ ಬಗ್ಗೆ ಕೊಟ್ಟಿಲ್ಲ	-	- -
(10) ಅಡಮಾನಿತ ಬಗ್ಗೆ ಕೊಟ್ಟಿಲ್ಲ	-	- -	ಒಟ್ಟು	೨೫	ನಂ =
ಒಟ್ಟು	೩೩	ನಂ ನಂ	ಬಾಬಾಬಾಯಿ ಕೋಂ ಮಲ್ಲಿಕಾರ್ಜುನ ಸಿಂಧೂರ (ಪಿರ್ಯಾದಿ) ಸ್ವತಃ ಸಿಂಧೂರ ಗಣಪತಿ ಸಿಂಧೂರ, ಗಣಪತಿ ಸಿಂಧೂರ, ಗಣಪತಿ ಸಿಂಧೂರ (ಪಾರ್ಟಿ ಬಿಟ್ಟಿಲ್ಲ)	೧	ನಂ -
			ಬಾಕಿ	೩೫	ನಂ -

ಈ ಮೇಲಿನ ಸಾಕ್ಷಿ ಗಣಪತಿ ಸಿಂಧೂರ ಸಿಂಧೂರ ಸಿಂಧೂರ

Suits.

Dharwar.
For a declaration that the plainti is entitled to hold as a permanent occupant, by right of adverse possession or by reason of a lost grant. Revision Survey Nos. 49 and 50 of Hosa Yellapur and that he is a holder of a rent free permanent tenure in respect of Revision Survey No. 99 of Marian Timmasagar.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 2827
Bombay Castle, 22nd March 1948.

Read Government Resolution, Legal Department No. 4657, dated the 3rd July 1947.

Letter from the District Government Pleader,

In the Court of the First Class Sub-Judge, Dharwar. Special Long Cause Civil Suit No. 92 of 1943.	Dharwar, No.310, dated the 11th March 1948,
The United Basel Mission Church in India Trust Association Balmatha, Mangalore, South Kanara, Madras Presidency (its Chairman being Rev. A. Strekeisen) by the attorney of the Trust - Robert Samuel Bangera. .....Plaintiff;	stating that the suit noted in the margin
Vs.	was
The Province of Bombay. ..... Defendant.	decided by the ~~First Class Sub-~~ Civil
Claim- Rs. 10,500.	Judge, S.D.

Dharwar, on 29th November 1947, when the following order was passed :-

"Suit is dismissed for default. The plaintiff shall pay the legal costs of defendant and shall bear his own."

and forwarding an uncertified copy of the judgment and decree.

RESOLUTION :- The result of the suit is recorded.

By order of the Governor of Bombay,

Original

R.M. MEHTA,
Assistant Secretary to Government.

To

The Revenue Department,

The Commissioner, Southern Division,

The Collector of Dharwar.

K. 19/3.

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No. 7617

Office of the

Remembrancer of Legal Affairs,

Bombay Castle, 11th August 1948,

Subject :- Special Suit No. 92 of 1943 and
Special Misc. No.28 of 1947

MEMORANDUM.

With reference to his No. 752, dated the 21st July 1948, on the above subject the District Government Pleader, Dharwar is informed that Government is agreeable to compromise the suit on the terms mentioned in the Remembrancer of Legal Affairs' Memorandum No. 7525, dated the 16th July 1947, subject to the condition that the plaintiff should bear the costs of the suit and of the application for restoration and pay Government's costs throughout.

1/c

For Remembrancer of Legal Affairs

To

The District Government Pleader,
Dharwar.

Copy to:-

The Revenue Department,

The Commissioner, Southern Division,

The Collector of Dharwar.

6Kc. 11.8.

Subd for sign.

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In the Court of the First Class Subordinate Judge, at Dharwar. Ex...

-Spl. L.C.Suit No.92 of 1948.

The United Basel Mission Church in India Trust Association, Malmatha, Manglore, South Canara, Madras Presidency (its Chairman being Rev. A. Strekeisen, age 50, Occupation Missionery, residing at Calicut) by the Attorney of the Trust - Robert Samuel Bangera, age 38, Chirstian, Occupation Head-Master, Basel Mission High School, Dharwar. .. .. Plaintiff.

Against.

The Province of Bombay. ... ... Defendant.

Claim Rs.200/- for Court fee and Rs. 10,500/- for jurisdiction.

The plaintiff states :-

(1) The plaintiff is a body registered under the Indian Companies Act 1913 and consists mostly of - Indians alone, having no affiliation outside India.

(2) The plaintiff has succeeded to and has taken over all properties formerly held by the Basel Mission. Among the said properties are :-

a. S.No.49 of Hosa-Yellapur in the City of Dharwa
b. S.No.50 of ----------do----------
c. S.No.99 of Marian Timmasagar in the City of Hubli.

On portions of these lands are churches, schools, and other buildings erected by the Basel Mission which now belong to the plaintiff. Part of the said lands are now distinguished by City Survey numbers

(3) A portion of Survey No.49 of Hosa-Yellapur, Dharwar, measuring about 2 acres was held by the Basel Mission under a lease for 99 years granted in 1839 by the [redacted] Government. The remaining [redacted]

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(7) The plaintiff is still in possession of the lands in question except 3 acres in S.No.99 of Hubli which the defendant has made over to the Forest Department for War purposes on or about the 23rd December 42 and the actual possession of which cannot be claimed by the plaintiff during the period of war.

(8) Notice of suit was given to the defendant through the Collector of Dharwar on 12-8-1943 as required by section 80 of the Civil Proceedure Code.

(9) The cause of action for declaration arose on 18th April 1941, when the defendant denied the right of the plaintiff as occupant or permenent tenure-holder of the suit lands.

(10) The claim in suit has been valued at Rs.200/- for the purpose of Court fee in view of the fixed fee of Rs.15/- prescribed for a declaratory suit. The market value of the properties as to which the plaintiff claims declaration is about Rs.10,500/-.

(11) This Court has jurisdiction to try the suit, as it is one against Government and also because the subject matter exceeds Rs.5000/- in value.

(12) The plaintiff prays that a declaration be granted :-

a). that plaintiff is entitled to hold as permanent occupants, by right of adverse possession or by virtue of a lost grant the lands bearing S.No.49 (except 2 acres therein) and S.No.50 of Hosa-Yellapur, Dharwar.

b). That the plaintiff is the ~~owner~~ holder of a rent free permanent tenure in respect of S.No.99 of Marian Timmasagar, Hubli.

(13) The plaintiff claims the costs of this suit.

(14) The plaintiff craves liberty to amend this plaint, and claim, when the occasion arises, possession of 3 acres in S.No.99 of Hubli which is taken possession of for war purposes by the Forest Department in Dec 42.

This suit coming on this day for final disposal before Mr.S.S.Alur, Civil Judge, Sr. Dn., Dharwar in the presence of Mr.D.N.Chandavarkar pleader for Plff. and Mr.H.V.Jathar pleader for defendant, it is hereby ordered as per compromise pursis Ex.174

1. R.S.Nos.49 and 50 of Hosayellapur, Dharwar Taluka and part of R.S.No.99 of Marian-Tammasagar, Hubli, are the suit properties.

2. The plaintiff has conceded the right of Government to resume the suit lands

3. The defendant (Government) has however been pleased to grant for religious and educational purposes afresh. to the plaintiff on rent-free lease, to run for a period of 30 years from the date of the decree lands at Hosyellapur, Dharwar and Marian-Timmasagar. Hubli out of the suit properties as follows

	Acres.	Gunthas.	Value in Rs.
(A) Land at Dharwar	6	16.	82, 000/-
(B) Land at Hubli.	2	4.	31, 655/-
	8.	20.	113, 655/-

4. The defendant Government has been further pleased to grant an annual lease from the date of decree to the Mission the lands out of the suit properties as follows:-

	Acres.	Gunthas.
A) Land at Dharwar (Hosa-Yellapur)	8.	16.

This is to be given on annual lease with non-agricultural assessments to be fixed by the Government, as plaintiff Mission is receiving rent now, pending the establishment of a Housing Society.

B) Land at Hubli (Marian-Timmasagar) 1.

This is to be granted on annual lease on rent on basis of a non-agricultural basis.

5. All the remaining portion of suit lands at Dharwar and Hubli are to be resumed by Government. Out out of such resume lands 10 acres at Hosa-Yellapur, Dharwar is proposed by Government to be used for [redacted]ment.

and 1 acre - 26 gunthas at Dharwar, Hosa-Yellapur is - given to the owners to whom the said lands has already been sold by the Mission. A portion of lands 4 acres - 23 gunthas at Hubli - Marlan Timmasagar out of Hubli suit property is to be kept for police Department. The proposal of the Mission at Hubli that some land in exchang of this piece of land should be given to it, will be seperately considered by the Government. Further a portion of 9 acres of Hubli land to be resumed is to be earmarked for Housing Society to be formed within 2 years The land will be given to the Housing Society and not the Mission whether it will have a concession rate or not wil be considered after Society is formed

6. The details with respect to demarcation of the - lands issued by virtue of this decree, to the plaintiff, will be got worked out by plaintiff and defendant through the Survey Department. The details with respect to N.A. assessment imposed and to be imposed on the lands will be got decided by the revenue authorities

7. Plaintiff shall bear the costs of the suit and pay defendant's costs, throughout.

Bill of Costs

Plaintiff.		Rs.	As.	Ps.
1.	Stamp for plaint. Ex.1.	15/	-/-	
2.	Do for power Ex.2.		-/10/-	
3.	Pleader's fees on Rs.10,500.	295/	-/-	
4.	Process fees, Ex.1.	5/	-/-	
5.	Copying fees & stamp Ex.5 to 63.	16/	-/-	
	Total	331/	10/-	

Defendant.		Rs.	As.	Ps.
1.	Stamp for Exs.57,58,149,157 to 161,163 164, and 169.	6/	14/-	
2.	Pleader's fees on Rs.10,500.	295/	-/-	
3.	Copying fees Exs.68 to 96,99 to 104. ..	19/	14/-	
	Total	321/	12/-	
	Costs disallowed on Exs.163,164 and 169.	1/	14/-	
	Balance..	319/	14/-	

Given under my hand and seal of the Court this 9th day of November 1948.

Chairman

2-12-48. Sd/- Civil

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and 1 acre - 20 gunthas at Dharwar, Hoss-Yellapur is given to the owners to whom the said lands has already been sold by the Mission. A portion of lands 4 acres - 23 gunthas at Hubli - Marian Timmasagar out of Hubli suit property is to be kept for Police Department. The proposal of the Mission at Hubli that some land in exchange of this piece of land should be given to it, will be seperately considered by the Government. Further a portion of 9 acres of Hubli land to be resumed is to be earmarked for Housing Society to be formed within 2 years The land will be given to the Housing Society and not the Mission whether it will have a concession rate or not will be considered after Society is formed.

6. The details with respect to demarcation of the lands leased by virtue of this decree, to the plaintiff, will be got worked out by plaintiff and defendant through the survey department. The details with respect to N.A. assessment imposed and to be imposed on the lands will be got decided by the Revenue Authorities.

7. Plaintiff shall bear the costs of the suit and pay defendant's costs, throughout.

Bill of Costs.

	Plaintiff.	Rs. As. Ps.
1.	Stamp for plaint. Ex.1.	15/ -/-
2.	Do for power Ex.2.	-/10/-
3.	Pleader's fees on Rs.10,500.	295/ -/-
4.	Process fees, Ex.1.	5/ -/-
5.	Copying fees & stamp Ex.5 to 63. ..	16/ -/-
	Total	331/10/-

	Defendant.	
1.	Stamp for Exs.57,58,149,157 to 161,163, 164, and 169.	6/14/-
2.	Pleader's fees on Rs.10,500.	295/ -/-
3.	Copying fees Exs.68 to 96,99 to 104. ..	19/14/-
	Total	321/12/-
	Costs disallowed on Exs.163,164 and 169.	1/14/-
	Balance.	319/14/-

Given under my hand and seal of the Court this 9th day of November 1948.

2-12-48. Civil. 53/